

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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TRUSTEES OF THE STRUCTURAL STEEL AND
BRIDGE PAINTERS OF GREATER NEW YORK
EMPLOYEE TRUST FUNDS AND TRUSTEES OF THE
DISTRICT COUNCIL 9 PAINTING INDUSTRY
INSURANCE AND ANNUITY FUNDS,

ANSWER

JUDGE KARAS

Plaintiffs,

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against-

TOWER PAINTING CO., INC. AND LIBERTY
MUTUAL INSURANCE COMPANY,

Defendants.

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Defendants Tower Painting Co., Inc. ("Tower") and Liberty Mutual Insurance
Company ("Liberty") by their attorney, George A. Marco PLLC, respond to plaintiffs'
complaint as follows:

1. Deny knowledge or information sufficient to form a belief as to the truth
of the allegations contained in paragraphs "1", "2", "3", "4", "5", "6", "7", "8" and "9" of
plaintiffs' complaint.

2. Admit the allegations contained in paragraphs "10", "11" and "12" of
plaintiffs' complaint.

3. Deny each and every allegation contained in paragraphs "13", "14" and
"18" of plaintiffs' complaint except admit that defendant Tower entered into an

AS AND FOR A RESPONSE TO THE FIRST CLAIM FOR RELIEF

agreement with the Union and respectfully refers the Court to said agreement for its true terms and conditions.

4. Deny each and every allegation contained in paragraphs "15", "16" and "17" of plaintiffs' complaint except admit that certain fringe benefit contributions are due plaintiffs by defendant Tower .

5. Deny each and every allegation contained in paragraph "19" of plaintiffs' complaint.

AS AND FOR A RESPONSE TO THE SECOND CLAIM FOR RELIEF

6. In response to paragraph "20" of the complaint, defendants repeat, reallege and reiterate each and every response contained in paragraphs "1" through "19" above as if set forth more fully herein.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs "21" and "23" of the complaint and respectfully refers all questions of law to be determined by the Court at the time of trial.

8. Deny each and every allegation contained in paragraph "22" of plaintiffs' complaint except admit that certain fringe benefit contributions are due plaintiffs by defendant Tower .

9. Deny each and every allegation contained in paragraphs "24", "25" and "26" of plaintiffs' complaint.

AS AND FOR A RESPONSE TO THE THIRD CLAIM FOR RELIEF

10. In response to paragraph "27" of the complaint, defendants repeat, reallege and reiterate each and every response contained in paragraphs "1" through "26" above as if set forth more fully herein.

- plaintiffs' complaint.
18. Deny each and every allegation contained in paragraphs "36" and "38" of of the allegations contained in paragraphs "34", "35" and "37" of plaintiffs' complaint.
17. Deny knowledge or information sufficient to form a belief as to the truth questions of law to be determined by the Court at the time of trial.
- of the allegations contained in paragraph "33" of the complaint and respectfully refers all
16. Deny knowledge or information sufficient to form a belief as to the truth complaint except admit that defendant Liberty executed a bond.
15. Deny each and every allegation contained in paragraph "32" of plaintiffs' if set forth more fully herein.
- and reiterate each and every response contained in paragraphs "1" through "30" above as
14. In response to paragraph "31" of the complaint, defendants repeat, reallege

AS AND FOR A RESPONSE TO THE FOURTH CLAIM FOR RELIEF

- complaint.
13. Deny each and every allegation contained in paragraph "30" of plaintiffs' defendant Tower .
- complaint except admit that certain fringe benefit contributions are due plaintiffs by
12. Deny each and every allegation contained in paragraph "29" of plaintiffs' questions of law to be determined by the Court at the time of trial.
- of the allegations contained in paragraph "28" of the complaint and respectfully refers all
11. Deny knowledge or information sufficient to form a belief as to the truth

19. Plaintiffs' complaint fails to state a cause of action for which relief can be granted.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

20. Plaintiffs' complaint is barred by the applicable statute of limitations.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

21. Plaintiffs' complaint is barred by plaintiff's failure to meet statutory and/or contractual conditions precedent.

AS AND FOR A FOURTH AFFIRMATIVE DEFENSE

22. Plaintiffs' complaint is barred by plaintiff's failure to satisfy the requirements of State Finance Law §137 and/or Labor Law §220.

AS AND FOR A FIFTH AFFIRMATIVE DEFENSE

23. Plaintiffs seek to recover for items that are not covered by State Finance Law §137 and/or Labor Law §220.

AS AND FOR A SIXTH AFFIRMATIVE DEFENSE

24. Plaintiffs' claim is barred by release, payment and/or waiver.

AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE

25. Defendant Liberty's liability, if any, is limited to the penal sum of the bond, and to the extent that any other entity has an entitlement to the proceeds of the bond, plaintiffs' entitlement, if any, is limited to its pro rata share.

AS AND FOR AN EIGHTH AFFIRMATIVE DEFENSE

26. Upon information and belief, any monies due and owing to plaintiffs are less than pleaded and/or improperly calculated.

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TO:

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/s/

Respectfully,

Dated: New York, New York
March 4, 2008

its bond.
WHEREFORE, defendants demand judgment dismissing plaintiffs' complaint in its entirety and for such other and further relief as this Court may deem just and proper.

28. Defendant Liberty may be held liable herein only according to the terms of

AS AND FOR A TENTH AFFIRMATIVE DEFENSE

bargaining agreements.

27. Plaintiffs' complaint is barred by plaintiffs' breach of its collective

AS AND FOR A NINTH AFFIRMATIVE DEFENSE